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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)

PP Docket No. 93-253

TO: The Commission

REPLY COMMENTS OF HOME BOX OFFICE

Home Box Office, a Division of Time Warner Entertainment Company, L.P. ("HBO"), by its attorneys, hereby offers the following Reply Comments directed to the applicability of new auction procedures to the licensing of satellites.

I. STATEMENT OF INTEREST

HBO is a major supplier of programming to cable television systems, to other multichannel video program distributors and directly to the public. HBO provides its multiple channels of programming to distributors and to the public on a subscription basis. HBO is not itself a satellite licensee and is not engaged in the transmission of its programming services. HBO's programming services are distributed via satellite transponders supplied by fixed satellite licensees. Upon commencement of operation of direct broadcast satellites, HBO's programming also will be distributed by those satellites.

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II. SPECIFICATION OF AUCTION PROCEDURES FOR SATELLITE LICENSING IS PREMATURE AND UNWARRANTED

In its Notice of Proposed Rulemaking in this proceeding, FCC 93-455, released October 12, 1993 (the "Notice"), the Commission has indicated that auction procedures may be used for applications for facilities in the fixed and mobile satellite services. Notice at ¶¶ 153-56. The Commission also has requested comment on whether auction procedures should be adopted for authorizations in the direct broadcast satellite service. Id. at ¶ 23. Comments were filed by a number of parties concerning the applicability of the auction procedures to various satellite services. HBO agrees generally with these comments which emphasize the difficulty of applying auction procedures to satellites engaged in international communications and also the desirability of using other techniques to avoid reaching a situation where a conflict between mutually exclusive applications must be resolved by a denial of all but one application.

Up to the present time, the Commission has been able to accommodate demand so that it has not been necessary in the fixed and broadcast satellite services to resolve mutually exclusive situations through hearings, lotteries or other similar means. There is no reason to believe that the Commission will be less successful in the future at what it has so successfully done in the past, and it is, therefore, unlikely that irresolvable mutually exclusive situations will arise.

The dearth of applications for new satellites, other than replacements for existing fixed satellites and multiple (low earth orbit) satellite proposals, reinforces the conclusion that mutually exclusive situations are unlikely to arise in the satellite services. To the extent conflicts develop, HBO endorses the comments of parties such as Loral Qualcomm and AMSC who have suggested that the Commission continue to rely on engineering approaches and negotiation to resolve the allocation of frequencies and orbital slots. HBO agrees that these alternate procedures should be the primary techniques used by the Commission and satellite applicants. We note that in establishing the auction procedures, Congress expressly supported the Commission's attempts to resolve mutual exclusivity through such other means. 47 U.S.C. § 309(j)(6)(E).

In addition, unlike many other services discussed in the Notice, there have traditionally been only a limited number of parties interested in providing a satellite service due both to its high capital expense and the significant risk of launch failure. As a result of these unique circumstances, holding auctions for satellite services may not be appropriate since the proper functioning of auctions contemplates vigorous competition among significant numbers of bidders. That has not been the case historically with applicants in the satellite services.

Because at the present time there is no likelihood of irreconcilable mutually exclusive applications, there is no need to devise specific auction criteria to resolve such situations in the fixed and broadcast satellite services. It would be far

preferable for the Commission to defer consideration of auction techniques for these services until it has obtained greater experience in other services and has concluded that irreconcilable mutual exclusivity is so likely in the satellite services that some new technique must be employed.

III. CONCLUSION

For the foregoing reasons, HBO urges the Commission to refrain from adopting any auction procedures applicable to satellite services at this time.

Respectfully submitted,

HOME BOX OFFICE,
a Division of Time Warner
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